

SERVED: December 23, 1996

NTSB Order No. EA-4509

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14370
v.)	
)	
Michael John Taylor)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent, who is not represented by counsel,¹ has appealed from the oral initial decision and order of Administrative Law Judge Patrick G. Geraghty, rendered in this proceeding at the conclusion of an evidentiary hearing held on April 25, 1996.² By

¹Respondent was represented by counsel at the hearing.

²An excerpt from the hearing transcript containing the initial decision is attached.

that decision, the law judge affirmed the Administrator's order, suspending respondent's commercial pilot and flight instructor certificate for 60 days, on allegations that he violated section 61.195(c) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61, by failing to give required flight instruction before endorsing one of his students' pilot certificate for solo cross-country flight privileges.³

The facts giving rise to this complaint were discovered during the course of an investigation into the crash of aircraft N2150A, that occurred on February 11, 1995. One of respondent's students was operating the controls of N2150A, performing his solo cross-country flight, at the time of the incident. An FAA investigator subsequently examined the student pilot's logbook, and the entries did not support respondent's endorsement for solo cross-country flight privileges because the student appeared to have not received all of the flight instruction required by FAR § 61.93(c)(1)(i). A letter of investigation was sent to respondent. Respondent produced a document that purported to

³FAR § 61.195(c) provided at the time of the allegations in pertinent part as follows:

§ 61.195 Flight instructor limitations.

The holder of a flight instructor certificate is subject to the following limitations....

(c) *Endorsement of student pilot certificate.* He may not endorse a student pilot certificate for initial solo or solo cross-country flight privileges, unless he has given that student pilot flight instruction required by this part for the endorsement....

show that the necessary training took place on February 10, 1995. The student's logbook did not document any flight training for that date, and, according to the investigator, respondent admitted to him that he only gave the student ground instruction on that date. This enforcement action followed.

Respondent makes numerous arguments in his appeal brief, all of which we view as raising, essentially, two issues for our consideration.⁴ First, he contends, the law judge should have dismissed the allegations under the Board's stale complaint rule.⁵ Secondly, respondent argues, the Administrator failed to meet his burden of proof. The Administrator has filed a brief in reply, urging the Board to affirm the law judge's decision.⁶ For the reasons that follow, we deny respondent's appeal.

The Stale Complaint Issue:

According to the record, the Administrator mailed a Notice of Proposed Certificate Action (NOPCA) to respondent via

⁴Respondent also filed a motion to disqualify any Board Member who has ever been associated with either the Airline Pilots' Association or the International Association of Machinists and Aerospace Workers, claiming such a Member might be biased against him since, apparently, respondent is a former Eastern Airlines pilot. The motion is denied. A claim of potential bias does not warrant disqualification.

⁵Under the Board's stale complaint rule, 49 C.F.R. § 821.33, a complaint that alleges offenses which occurred more than 6 months prior to the Administrator's advising an airman as to his reasons for a proposed certificate action, may be subject to dismissal.

⁶We will not consider respondent's unauthorized response to the Administrator's reply brief. Respondent neither requested specific permission to file it, nor established good cause for its acceptance. 49 C.F.R. § 821.48(e).

certified mail, on or about August 2, 1995, 9 days before the 6-month period expired under the stale complaint rule. The NOPCA was prepared and typed in the legal office and then placed in an internal FAA mail system so that it would be mailed from the agency mailroom. An internal tracking form was prepared by a member of the legal office staff, by hand. On that form, respondent's address could be misread as "16607 Telegraph Street," because of the clerk's handwriting. The correct address is 6607 Telegraph Street.

Respondent testified that he never received the NOPCA. Documents produced by the Administrator indicate that it was placed in the mail by the FAA mailroom on August 3, 1995, and that a return receipt was never logged in to show if the mail had been received. The envelope was also never returned to the FAA. On November 9, 1995, FAA counsel discovered that the receipt had never been returned. She then mailed the NOPCA by regular mail, which respondent received.

The law judge ruled that dismissal of the Administrator's order was not required under the stale complaint rule. Respondent contends this ruling is erroneous. Respondent asserts that because his address appears to be incorrect on the FAA internal mail tracking form, we should assume that the correspondence was also incorrectly addressed. We disagree. The actual NOPCA had the correct address typed on the face of the correspondence, as does every other piece of correspondence that appears in the Board's case file. We think it is more likely

that the envelope was typed with the correct address.⁷

Respondent also argues that the order should be dismissed as stale, at least with regard to its application against his commercial certificate, as opposed to his flight instructor authorization. Respondent correctly notes that the NOPCA proposed suspending only his flight instructor authorization. When the order was issued, however, the Administrator ordered suspension of the flight instructor authorization of his commercial certificate **and** any other airman certificates he holds. Respondent suggests that because the Administrator may have discovered this omission from the NOPCA during the informal conference, which respondent did not attend, he was prejudiced in his ability to defend against the enforcement action. We reject this argument. Respondent's attorney of record participated in the informal conference by telephone. Therefore, respondent, through counsel, had notice of the change, and counsel was clearly prepared at the hearing to defend the issue. Since there is no evidence that respondent was prejudiced by the change, we think that any error in the issuance of the order was harmless.

Sufficiency of the evidence:

Respondent asserts that the Administrator failed to establish by a preponderance of the evidence that he did not give

⁷Board precedent supports the law judge's finding that good cause existed for the Administrator's delay in re-serving the NOPCA by regular mail. Administrator v. Gelman, 5 NTSB 196 (1985)(Good cause found where NOPCA was mailed almost 1 month before the expiration of the 6-month period and neither the (continued...)

the required flight instruction to his student before he endorsed the student's student pilot certificate for solo cross-country privileges. Respondent claims that the law judge's credibility determination in favor of the Administrator's witness should be reversed. He asserts that the FAA investigator's testimony was fabricated. He also contends that his attorney was prevented from rebutting the Administrator's witness' rebuttal testimony. Finally, respondent argues that his student was not required to take the flight instruction required by FAR § 61.93 because he had accrued over 1,000 hours of flying time approximately twenty years ago, when he was a Navy pilot. We reject all of these contentions.

The record reveals that when the student was initially asked to produce evidence of his training, all he produced was his logbook. Only in response to the letter of investigation, did respondent then produce what he claimed was all the evidence he had to show the necessary flight training was accomplished. According to the testimony of the investigating FAA inspector, he reviewed this evidence and found that it was inconsistent with the logbook entries, because the logbook did not show that any flying time was logged on the days when the student supposedly took the flight training. When he questioned respondent on the matter, respondent admitted that he had given the student only ground instruction on certain of the required maneuvers. The

(..continued)
envelope or return receipt were returned).

investigator prepared a memorandum of this conversation. Respondent denies that this conversation ever took place.

Prior to the hearing, respondent produced additional documents, including a flight review checklist. (R-2) Various maneuvers and other areas of instruction are listed therein, and certain items are initialed and dated by both respondent and his student. Both contend that this documentation disproves the Administrator's allegations.

The law judge rejected respondent's claims, finding they lacked credibility. As we have stated repeatedly, see, e.g., Administrator v. Rivera and Helivan Helicopters, Inc., NTSB Order No. EA-4419 at 5 (1996), and cases cited therein, the law judge sees and hears the witnesses, and he is in the best position to evaluate their credibility. Absent some compelling reason that persuades us that a law judge's credibility determination is inconsistent with the overwhelming weight of the evidence, we will not disturb his findings.⁸ Respondent offers no persuasive reason to disturb the findings of the law judge in this particular proceeding.⁹

⁸As to respondent's claim that he was prejudiced by the law judge's refusal to permit surrebuttal, we agree with the Administrator that respondent's counsel was given ample opportunity to cross-examine the witnesses, and that additional testimony would have been superfluous. It was not an abuse of discretion for the law judge to deny the request.

⁹Respondent also challenges the sanction as too harsh, but establishes no reason why we should not defer to the period of suspension the Administrator has sought. In any event, we think the sanction is appropriate for the violations proved.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The 60-day suspension of respondent's commercial certificate, flight instructor certificate, and any other airman certificate held by respondent, shall begin 30 days after service of this order.¹⁰

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

¹⁰For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).